

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

STARLIN LLC *et al.*¹

Debtors.

Chapter 11

Case No. 22-10888 (MG)

(Jointly Administered)

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In re:

175 SPRING STREET LLC *et al.*²

Debtors.

Chapter 11

Case No. 22-

(Joint Administration Requested)

-----X

DECLARATION PURSUANT TO LOCAL RULE 1007-2

Robert Gans, declares under penalty of perjury that the following statements are true and correct:

1. I am the:

- a. Manager of Starlin LLC, the Managing Member of 175 Spring Street LLC;
- b. President of 610 West 46th Street Enterprises, Ltd., the Managing Member of 610 West 46th Street LLC;

¹ The Mezz Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Starlin LLC (6765); 610 West 46th Street Enterprises, Ltd. (1937); RM Holdings Company Inc. (2733); BRC Owners, L.P. (5295); RG Mezz LLC (2437); RG Mezz III LLC (2895); RG Mezz V LLC (9871); and RG Mezz VI LLC (8222).

² The PropCo Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: 175 Spring Street LLC (4249); 610 West 46th Street LLC (3898); 616-620 West 46th Street LLC (3706); 616 11th Avenue LLC (5258); 609 11th Avenue LLC (5047); 613 11th Avenue LLC (6820); 617 11th Avenue LLC (9177); 623 11th Avenue LLC (5464); 108 Merrick Boulevard LLC (3250); and 533 West 27 Street Common Member LLC (4581).

- c. President of RM Holdings Company, Inc., the Managing Member of 616-620 West 46th Street LLC;
- d. Manager of RG Mezz LLC, the Managing Member of 616 11th Avenue LLC;
- e. Manager of RG Mezz VI LLC, the Managing Member of 609 11th Avenue LLC;
- f. Manager of RG Mezz V LLC, the Managing Member of 613 11th Avenue LLC;
- g. Manager of BRC Owners LLC, the general partner of BRC Owners L.P.;
- h. Manager of RG Mezz III LLC, the Managing Member of 108 Merrick Boulevard LLC; and
- i. Managing Member of 533 West 27 Street Common Member LLC.

2. I submit this declaration in accordance with Local Bankruptcy Rule 1007-2 in support of the Debtors' filing of voluntary petitions under Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code").

3. I have instructed the Debtors' proposed counsel, Leech Tishman Robinson Brog PLLC to move for joint administration of these cases with the jointly administered cases of the Debtors' affiliates, Starlin LLC et al., Case No. 22-10888. This Rule 1007-2 Declaration addresses issues common to all the Debtors.

4. As noted in the previous paragraph, on June 28, 2022, Starlin LLC and its affiliates ("Mezz Debtors") filed their chapter 11 cases because of a concern

that the mezzanine lenders, described in more detail below, intended to pursue a UCC foreclosure sale of the membership interests held as collateral or exercise remedies under pledge agreements held by them which could have resulted in the Mezzanine Borrowers immediate loss of operational control of the those entities and the property owners being filed today. During the intervening period, the Debtors and the CPBH Entities (defined herein) have negotiated a comprehensive Settlement Agreement which is being filed contemporaneously with the petitions of the property owning entities and the Debtors and CPBH Entities intend to expeditiously seek approval of the Settlement Agreement which they expect will lead to the confirmation of a consensual joint chapter 11 plan of reorganization before the end of this year.

A. The Property-Owning Filing Entities

5. The below Debtors (“PropCo Debtors”) are the owners of real property and improvements located at these addresses (together, “Properties”):

Debtor	Property
175 Spring Street LLC	175 Spring Street, NY, NY
610 West 46 th Street LLC	610 West 46 th Street, NY, NY
616-620 West 46 th Street LLC	616-620 West 46 th Street, NY, NY
616 11 th Avenue LLC	616-624 11 th Avenue, NY, NY
609 11th Avenue LLC	603 West 45 th Street aka 609-611 11 th Avenue, NY, NY

613 11 th Avenue LLC	613-615 11 th Avenue, NY, NY
617 11 th Avenue LLC	617 11 th Avenue, NY, NY
623 11 th Avenue LLC	623 11 th Avenue, NY, NY
108 Merrick Boulevard LLC	108-02 and 108-16 Merrick Boulevard, Queens, NY

B. The PropCo's Prepetition Secured Indebtedness

6. Six of the Properties are contiguous and make up roughly half of a square city block on the west side of 11th Avenue between 45th and 46th street. Certain of these Properties are or were leased to Metropolitan Lumber, Hardware & Building Supplies, Inc. (“Met Lumber”), an entity that conducts a building supply business from the premises.³ The six properties, referred to as the “Assemblage” or the “West Side Parcels,” consist of 610 West 46th Street, 616-620 West 46th Street, 603 West 45th Street (a/k/a 609-611 11th Avenue), 613-615 11th Avenue, 617 11th Avenue, and 623 11th Avenue. The West Side Parcels have an aggregate land measurement of approximately 58,000 square feet, plus as-of-right development rights to build vertically. To better illustrate the Assemblage, attached hereto as exhibit “A” is a city map showing the parcels owned by the Debtors which comprise the Assemblage and which are shaded blue. The property shaded red is leased by Argo 45 LLC (discussed below) on which that entity has a purchase option that it has agreed to exercise, and CPBH Entities have agreed to loan the funds to finance

³ Met Lumber and the Debtors are indirectly under the common control of Robert Gans (“Gans.”)

the acquisition, all on the terms set forth and described in the Settlement Agreement

7. The Assemblage presents a unique and valuable opportunity for a large-scale commercial development in mid-town Manhattan.

8. On or about September 21, 2018, the Debtors, together with several other entities (collectively, “Borrowers”),⁴ obtained a loan in the original amount of \$130,240,000.00 from CMTG Lender 23, LLC (“Original Prepetition Secured Lender”), an affiliate of Mack Real Estate Group, pursuant to a Mortgage Loan Agreement, dated September 21, 2018 (“Prepetition Loan Agreement”). The principal amount of the loan was later paid down to \$116,020,000.00 (“Prepetition Secured Loan”).

9. The Prepetition Secured Loan was documented by, among other documents, an Amended, Restated and Consolidated Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of September 21, 2018 (“Original Mortgage”), and a Mortgage Loan Amended, Restated and Consolidated Promissory Note dated September 21, 2018 (“Original Note”), in the principal amount of \$130,240,000.

10. On or about December 20, 2018, the Original Mortgage and Original Note were split by a certain Note Splitter and Modification Agreement and Omnibus Amendment to Loan Documents dated as of December 20, 2018 (“First Note Splitter Agreement”), pursuant to which \$12,320,000 was split from the

⁴ The non-debtor Prepetition Borrowers are 34 Steinway Street LLC, Barracuda II LLC, Cleftone LLC, and Conquistador LLC.

Original Mortgage and Original Note and repaid from the sale of certain properties in Queens, New York. In connection therewith, Borrowers executed and delivered a certain Amended, Restated and Consolidated Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of December 20, 2018 (“First Amended Mortgage”) and Mortgage Loan Replacement Promissory Note (Remaining Premises) dated December 20, 2018, on a remaining loan balance of \$117,920,000.

11. On or about September 20, 2019, the Mortgage Loan and corresponding Note were again split under, *inter alia*, a certain Note Splitter and Modification Agreement and Omnibus Amendment to Loan Documents (“Second Note Splitter Agreement”), pursuant to which \$1,900,000 was split. The Debtors’ remaining debt, in the principal amount of \$116,020,000, was documented by a certain Amended, Restated and Consolidated Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of September 20, 2019 (“Mortgage”), and Mortgage Loan Replacement Promissory Note (Remaining Premises) dated September __, 2019 (“Note”) (collectively, as amended from time to time, the “Prepetition Secured Loan Documents”).

12. The Prepetition Secured Loan is secured by real property located at: (i) 533 West 27th Street, New York, New York 10001 (Block 699, Lot 14) (“Chelsea Property”); (ii) 175 Spring Street, New York, New York 10012 (Block 502, Lot 42); (iii) 616-624 11th Avenue, New York, New York 10036 (Block 1074, Lot 63); (iv) 610 West 46th Street, 616-620 West 46th Street, 603 West 45th Street a/k/a 609-611

11th Avenue, 613-615 11th Avenue, 617 11th Avenue and 623 11th Avenue New York, New York 10036 (Block 1093, Lots 21, 31, 33, 36, 42 and 129); and (v) 108-02 and 108-16 Merrick Boulevard, Queens, New York 11433 (Block 10176, Lots 8 and 12) (collectively, “Mortgaged Properties”).

13. On or about April 15, 2022, Clinton Holdings PB I LLC (“Clinton I”) informed the Debtors that the Original Prepetition Secured Lender has assigned its rights, title and interests in connection with the Prepetition Secured Loan to Clinton I.

C. **The Argo 45 LLC Purchase Option**

14. Argo 45, LLC (“Argo”), is an affiliate of the Debtors and a party to the Settlement Agreement. It has not yet filed a chapter 11 case but intends on filing on or about September 20, 2022.

15. Argo leases property located at 605 West 45th Street, New York, New York from SA Waterfront Realty Inc., an unrelated third party, pursuant to a lease dated January __, 2013 (as amended, the “Argo Lease”). Article 30 of the Argo Lease contains a purchase option for the leased property allowing Argo to acquire the option property for \$4,500,000. The leased property is adjacent to the West Side Parcels and both the Debtors and the CPBH Entities believe that exercising the Option and closing on the Property so it will be included in the West Side Parcel will add additional value to the Assemblage.

16. Under the Settlement Agreement, Argo agreed to accelerate the closing date on the purchase option to ten days after the execution of the Settlement

Agreement. Argo did so. All the Parties to the Settlement Agreement have agreed that the transaction will be timely if it closes no later than September 19, 2022. To close the transaction, the CPBH Entities (or an affiliated entity) are required under the Settlement Agreement to loan Argo the \$4,500,000 purchase price plus the closing costs and Mr. Gans will cause the property to be added to Clinton I's collateral in accordance with the terms of the senior loan documents, and provide Clinton I a pledge of the membership interests in Argo, except for if the Debtor timely pays the Settlement Amount as contemplated by the Settlement Agreement, the interest on the loan will be waived in full.

D. Other Elements of the Debtors' Capital Structure- The Mezzanine Debt

17. On June 28, 2022, each of the Debtor entities who are equity owners and borrowers on mezzanine financing held by Clinton PB Holdings II LLC (“Clinton II”) filed their own chapter 11 cases which are being jointly administered under the case captioned *In re Starlin LLC et al*, Case No. 22-10888 (MG). The following has already been provided in connection with the *Starlin* cases and is included here to provide the Court with the complete context of the capital structure in one place.

18. Each of the PropCo Debtors are entities whose respective equity owners are borrowers on certain mezzanine financing — the “Mezzanine Borrowers,” which include the Mezz Debtors. On September 21, 2018, the Mezzanine Borrowers entered into a mezzanine loan agreement (“Mezzanine Agreement”) with the Mezzanine Lender, Midtown West Portfolio Lender LLC

“Original Mezzanine Lender,” and together with the Original Lender, the “Original Lenders”).

19. In exchange for the mezzanine loan, the Original Mezzanine Lender received a lien in the Mezz Debtors’ membership interests in the Debtors. The original principal amount of the mezzanine loan was \$17,760,000.⁵ Most of the Mezzanine Borrowers commenced Chapter 11 cases in this Court, which are being jointly administered under the case captioned *In re Starlin LLC et al*, Case No. 22-10888 (MG).

20. On or about April 15, 2022, the Original Mezzanine Lender assigned its rights, title and interests in the mezzanine loan to Clinton II.

21. The Original Mortgage Lender asserts that the PropCo Debtors have been in default under their loan obligations since January 2020. Additionally, the Properties have been the subject of a foreclosure action in New York State Supreme Court, New York County, initiated by the Original Prepetition Secured Lender, with Clinton I since substituting in as Plaintiff, Clinton II, the holder of the mezzanine loan, has also provided notice to the Mezz Debtors that it intended to conduct a UCC foreclosure of the Mezz Debtors’ membership interests in the Debtors, which in part precipitated the Mezz Debtors bankruptcy filings.

E. The 27th Street Property Investment

22. 533 West 27 Street Common Member LLC (“Common Member”) has also filed a chapter 11 petition. Common Member, unlike the PropCo Debtors, does

⁵ The amount of the Mezzanine Debt was later reduced to \$15,820,909 after certain paydowns following the release of properties in connection with the sale and refinancing of certain parcels.

not currently own any property but was the entity through which Gans invested in a property located at 533-35 West 27th Street New York, New York (“27th Street Property”).⁶ It has filed based on the requirements of the Settlement Agreement⁷ which the parties will be seeking approval of soon after the commencement of this case. Common Member owned 100% of the common interests in 533 West 27 Street JV LLC (“JV”) while 534 West 28th Pref LLC (“Initial Pref Member”) owned 100% of the preferred interests in JV it had obtained in exchanged for a \$5,000,000 investment. In connection with the acquisition of its preferred position, the Initial Pref Member also received a pledge of the equity ownership interests in Westside Realty of New York Inc. (“Westside”) and a pledge of Common Member’s membership interests in the JV.

23. JV owned 100% of the shares of Westside, which owned the property the 27th Street Property. On August 11, 2021, there was a UCC sale of the Common Member’s membership interests in the JV in the 27th Street Property. Common Member is a party to the Settlement Agreement, ECF Doc No. 23, Ex. A. On April 15, 2022, Clinton PB Holdings III LLC advised the Debtors that the Pref Investment position was assigned to and assumed by Clinton PB Holdings III LLC (“Clinton III,” collectively with Clinton I and Clinton II, “CPBH Entities”).

⁶ The 27th Street Property is sometimes referred to as 534-536 West 28th Street (“28th Street Property”), which is mentioned here to avoid confusion in the narrative or the case.

⁷ See, Debtors’ Motion for Approval of Settlement Agreement Pursuant to Fed. R. Bankr. P. 9019, Exhibit A, Settlement Agreement dated September 8, 2022, filed in *In re Starlin LLC*, Case No. 22-10888 as ECF Doc. No. 23.

F. The Settlement Agreement.

24. Before the Petition Date, on September 8, 2022, the Debtors and Mezz Debtors entered into a Settlement Agreement with CPBH Entities, among others, which will resolve all claims between the Debtors, Mezz Debtors and CPBH Entities and their predecessors as well as pending litigation involving Mr. Gans and his daughter. The Debtors have moved to approve the Settlement Agreement under Bankruptcy Rule 9019. Additional facts and circumstances of these chapter 11 cases are in the 9019 Motion filed contemporaneously with the Debtors' chapter 11 petitions. The 9019 Motion is also incorporated by reference.

25. No pre-petition committee was organized before the Order for relief.

26. No property of the Debtors is in the possession and control of a receiver.

27. A list of the names and addresses of the Debtors' twenty largest unsecured creditors is filed with the Debtors' schedules.

28. The remaining information required by Local Bankruptcy Rule 1007-2 will be included in the Debtors' schedules and statement of financial affairs, which are filed contemporaneously with this Declaration.

I declare under penalty of perjury under the laws of the United States, pursuant to 28 U.S.C. §1746, that the foregoing is true and correct.

[signature block on next page]

175 Spring Street LLC
By: Starlin LLC, Managing Member

/s/ Robert Gans
Robert Gans, Manager

616-620 West 46th Street
By: RM Holdings Company, Inc.,
Managing Member

/s/ Robert Gans
Robert Gans, President

609 11th Avenue LLC
By: RG Mezz VI LLC, Managing
Member

/s/ Robert Gans
Robert Gans, Manager

617 11th Avenue LLC
623 11th Avenue LLC
By: BRC Owners L.P., Managing
Member:
By: BRC Owner LLC, General
Partner

/s/ Robert Gans
Robert Gans, Manager

533 West 27 Street Common Member

/s/ Robert Gans
Robert Gans, Managing Member

610 West 46th Street LLC
By: 610 West 46th Street Enterprises,
Managing Member

/s/ Robert Gans
Robert Gans, President

616 11th Avenue LLC
By: RG Mezz LLC, Managing Member

/s/ Robert Gans
Robert Gans, Manager

613 11th Avenue LLC
By: RG Mezz V LLC, Managing Member

/s/ Robert Gans
Robert Gans, Manager

108 Merrick Boulevard LLC
By: RG Mezz III LLC

/s/ Robert Gans
Robert Gans, Manager

Exhibit A

